

H2O PA ACT - ENACTMENT
Act of Jul. 9, 2008, P.L. 908, No. 63
AN ACT

Cl. 64

Providing for the allocation of money in the Pennsylvania Gaming Economic Development and Tourism Fund and for funding of water or sewer projects, storm water projects, flood control projects and high hazard unsafe dam projects.

Compiler's Note: Section 7 of Act 50 of 2009 provided that Act 63 is repealed insofar as it is inconsistent with Act 50.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

CHAPTER 1
PRELIMINARY PROVISIONS

Section 101. Short title.
This act shall be known and may be cited as the H2O PA Act.
Section 102. Definitions.
The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Authority." The Commonwealth Financing Authority established under 64 Pa.C.S. Ch. 15 (relating to Commonwealth Financing Authority).

"Board." The Board of the Commonwealth Financing Authority established under 64 Pa.C.S. § 1512 (relating to board).

"Department." The Department of Environmental Protection of the Commonwealth.

"Eligible applicant." The Commonwealth, an independent agency or one or more municipalities or municipal authorities. A Commonwealth or independent agency shall be an eligible applicant only for the purposes of high hazard unsafe dam and flood control projects.

"High hazard dam." A dam so located as to endanger populated areas downstream by its failure.

"High hazard unsafe dam." A dam that is both a high hazard and an unsafe dam.

"Municipal authority." A public authority created under 53 Pa.C.S. Ch. 56 (relating to municipal authorities) or under the former act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945.

"PENNVEST." The Pennsylvania Infrastructure Investment Authority established under the act of March 1, 1988 (P.L.82, No.16), known as the Pennsylvania Infrastructure Investment Authority Act.

"Project." The acquisition, construction, improvement, including the installation of security measures, expansion, repair or rehabilitation of all or part of a water supply system, sewage disposal system, storm water system, flood control system or high hazard unsafe dam. The term shall include the consolidation or regionalization of two or more water supply systems, sewage disposal systems or storm water systems.

"Regional flood control project." A project to construct, rehabilitate or upgrade a flood control system that is owned by two or more municipalities or authorities.

"Regional systems." Two or more water supply, sewage disposal or storm water systems managed or operated as an integrated system regardless of whether the system is physically connected.

"Regional water supply, sewage disposal or storm water project." A project to construct, rehabilitate or upgrade a water supply system, sewage disposal system or storm water system that is owned by two or more municipalities or by a municipal authority that provides a water or sewer system for, or water or sewer services to, two or more municipalities.

"Unsafe dam." A dam designated by the Department of Environmental Protection with deficiencies of such a nature that if not corrected, the deficiencies could cause a failure of the dam with subsequent loss of lives or substantial property damage.

"Water or sewer project." The acquisition, construction, improvement, including the installation of security measures, expansion, repair or rehabilitation of all or part of a water supply system, sewage disposal system or storm water system.

CHAPTER 3 ALLOCATION OF FUNDS

Section 301. Fund distribution.

Notwithstanding the provisions of 4 Pa.C.S. § 1407(b) (relating to Pennsylvania Gaming Economic Development and Tourism Fund), all money in the Pennsylvania Gaming Economic Development and Tourism Fund not previously allocated to projects under the act of July 25, 2007 (P.L.342, No.53), known as the Pennsylvania Gaming Economic Development and Tourism Fund Capital Budget Itemization Act of 2007, and the Commonwealth's right, title and interest in Pennsylvania Gaming Economic Development and Tourism Fund receipts not encumbered by the Pennsylvania Gaming Economic Development and

Tourism Fund Capital Budget Itemization Act of 2007 are hereby transferred to the authority. The State Treasurer is authorized and directed to enter into any agreements with the authority and establish accounts and funds, that shall not be in the State Treasury, as the authority may direct as being necessary or appropriate to effect the transfer of Pennsylvania Gaming Economic Development and Tourism Fund receipts to the authority. For a ten-year period beginning with the initial deposits under 4 Pa.C.S. § 1407(c), no grants shall be distributed for any project located in a city or county of the first or second class. Following the allocation of all proceeds from obligations issued under section 501(a), all money other than money required for debt service shall be available for distribution under this act. No money shall be authorized or distributed for any project within a city or county of the first or second class, other than those projects described in the Pennsylvania Gaming Economic Development and Tourism Fund Capital Budget Itemization Act of 2007, until such time as an amount equal to \$750,000,000 has been authorized and distributed from the fund for projects outside of a city or county of the first or second class.

CHAPTER 5

WATER OR SEWER PROJECTS, STORM WATER PROJECTS, FLOOD CONTROL PROJECTS AND HIGH HAZARD UNSAFE DAM PROJECTS

Section 501. Commonwealth Financing Authority.

(a) General rule.--

(1) The authority shall incur indebtedness in an amount of up to \$800,000,000 in accordance with 64 Pa.C.S. Ch. 15 (relating to Commonwealth Financing Authority). The term of indebtedness shall not exceed 30 years. Net proceeds from the sale of obligations incurred under this section shall be allocated by the board for projects set forth under section 502 and for the payment of all reasonable costs and expenses related to the issuance.

(2) Bonds issued under this chapter shall not be a debt, liability or obligation of the Commonwealth. The provisions limiting liability imposed under 64 Pa.C.S. § 1521(d) (relating to bonds issuance) shall apply to the indebtedness under this act.

(b) Payments.--Beginning in fiscal year 2009-2010, money allocated under section 301 shall be used by the authority for payment of the debt service related to the issuance of obligations under subsection (a).

(c) Grants.--Proceeds from obligations issued under subsection (a) and money remaining in the fund following payment of debt service shall be used for single-year or multiyear grants to eligible applicants for projects under this chapter following review under section 502. Grants shall be awarded to eligible applicants for projects of \$500,000 or more. A grant under this act shall not exceed a total of \$20,000,000 for any project. Grants from proceeds from debt and from money remaining in the fund shall be awarded over a period not to exceed six years.

(d) Making of grants.--Grants shall be made as follows:

(1) A minimum of \$100,000,000 shall be awarded to flood control projects.

(2) A minimum of \$35,000,000 shall be awarded to high hazard unsafe dam projects. No more than \$20,000,000 may go to an eligible applicant that is the Commonwealth or an independent agency.

(e) Receipt of PENNVEST loan or grant.--The receipt of a loan or grant from PENNVEST shall not disqualify an applicant from eligibility for a grant under this act.

(f) Local participation.--An eligible applicant shall provide funds of not less than 50% of the amount awarded by the authority for water or sewer projects. An eligible applicant for a flood control project shall provide easements and rights-of-way, relocation of buildings and utilities and alteration or rebuilding of inadequate bridges and operation and maintenance of completed projects. An eligible applicant shall provide funds of not less than 25% of the amount awarded by the authority for high hazard unsafe dams. An eligible applicant that is the Commonwealth or an independent agency shall not be required to match.

(g) Applications.--Applications for grants under this chapter shall be in a form determined by the board and shall contain plans and other documentation as required by the board. Applications shall be available electronically. An eligible applicant that is the Commonwealth or an independent agency shall submit its application through the department on a form prescribed by the department.

(h) Guidelines.--The authority shall publish guidelines in the Pennsylvania Bulletin relating to the following:

- (1) Eligibility of applicant.
- (2) Required documentation.
- (3) Form of application.
- (4) Costs of a project that are eligible for a grant.
- (5) Requirements and standards of review for eligible

projects.

(i) Notification.--

(1) Within 90 days of the effective date of this section, the authority shall submit for publication notification of the establishment of the programs under this act and a brief description of each in the Pennsylvania Bulletin and on the Internet website of the Department of Community and Economic Development. The authority shall provide written notification of the establishment of the programs to all of the following:

- (i) The County Commissioners Association of Pennsylvania.
- (ii) The Pennsylvania State Association of Township Commissioners.
- (iii) The Pennsylvania State Association of Township Supervisors.
- (iv) The Pennsylvania State Association of Boroughs.
- (v) The Pennsylvania Municipal Authorities Association.
- (vi) The Pennsylvania League of Cities and Municipalities.

(2) The notification under paragraph (1) shall include the name of a contact person and the anticipated time that funding, applications and other information will become available.

Section 502. Distribution of funds.

(a) General rule.--The board shall distribute funds available under section 501(c) by awarding grants to eligible applicants for the following projects:

- (1) Water or sewer projects owned by an eligible applicant.
- (2) Flood control projects owned by an eligible applicant.
- (3) High hazard unsafe dam repair or rehabilitation projects for dams owned by an eligible applicant.

(b) Review.--The authority shall consult with the appropriate agency under section 503 and award grants in accordance with priorities under section 503 and guidelines adopted under section 501(h).

Section 503. Review by agencies.

(a) Water or sewer projects.--

(1) A minimum of 50% of grants for water or sewer projects approved by the authority shall be awarded to projects that will consolidate two or more systems or to regional systems.

(2) Priority shall be given to eligible applicants that are currently subject to a Federal or State court or agency order, consent decree or new permit discharge requirements imposed after January 1, 2007.

(3) PENNVEST, in cooperation with the department, shall review all applications for grants under section 502(a)(1). The review shall include:

(i) The number of municipalities that will be part of the water or sewer project and the number of municipalities that will benefit from the project.

(ii) Whether the construction, repair or consolidation of a water or sewer project will enable customers of the system or regional system to be more efficiently served.

(iii) The cost-effectiveness of the project when compared to other water or sewer projects.

(iv) The nature of any Federal or State court or agency order, consent decree or new permit discharge requirements imposed after January 1, 2007, applicable to the project.

(v) The consistency of the proposed project with other State and regional resource management and economic development plans.

(vi) Whether the project serves existing populations or whether the project is intended to serve new development.

(vii) Whether the eligible applicant has secured any required planning and permit approvals for the project from the department.

(viii) Whether the project is consistent with any applicable county or local comprehensive plans.

(b) Flood control projects.--The department shall review all applications for grants under section 502(a)(2). The review shall include an analysis of the following:

(1) The eligible applicant of the flood control project and the number of municipalities that will potentially benefit from the project.

(2) The history of flooding in the area to be served by the flood control project.

(3) The cost-effectiveness of the flood control project.

(4) Improvement in the ability of the eligible applicant to come into compliance with Federal and State statutes, regulations or other standards.

(5) Whether the eligible applicant has secured any required planning and permit approvals for the project from the department.

(6) Whether the project is consistent with any applicable county or local comprehensive plans.

(c) High hazard unsafe dams.--The department shall review all applications for grants under section 502(a)(3).

(1) The review shall include an analysis of the following:

(i) The level of hazard posed by the dam.

(ii) Whether the proposed project represents the most cost-effective way to address the hazard.

(2) To be eligible, the owner of the high hazard unsafe dam shall:

(i) Obtain all applicable permits required under the act of November 26, 1978 (P.L.1375, No.325), known as the Dam Safety and Encroachments Act.

(ii) Develop an emergency action plan as required by section 5(a)(4) of the Dam Safety and Encroachments Act and distribute the plan to affected county and municipal emergency management officials.

(iii) Comply with all inspection requirements and submit inspection reports to the department as required by law.

Section 504. Project review.

The authority shall review the information received under section 503, prepare an assessment of each project and determine which projects will best utilize and promote the efficient management of water resources and protect the health and safety of the citizens of this Commonwealth.

CHAPTER 7
REPORTING

Section 701. Annual reports.

(a) Authority report.--The authority shall provide an annual report, which at a minimum shall include:

(1) A list of all grants approved during the previous fiscal year.

(2) The name and address of each recipient, including the name of a contact person of the recipient.

(3) The amount of the grant and a detailed description of the project for which the grant was awarded.

(b) Department report.--The department, in collaboration with PENNVEST, shall provide an annual report, which at a minimum shall include:

(1) An analysis of how each program authorized under this act is improving the health and safety of the citizens of this Commonwealth.

(2) A summary and analysis of other Commonwealth programs dedicated to water or sewer projects, flood control projects and high hazard unsafe dams and how those programs are improving the health and safety of the citizens of this Commonwealth.

(c) Submission of reports.--The reports required under subsections (a) and (b) shall be submitted to the Majority Leader of the Senate, the Minority Leader of the Senate, the Majority Leader of the House of Representatives and the Minority Leader of the House of Representatives by October 1, 2009, and October 1 of each year thereafter. The reports shall also be posted and maintained on the official Internet website of the authority and the department.

CHAPTER 51
MISCELLANEOUS PROVISIONS

Section 5101. Expenses or costs.

No more than 0.5% of funds from net proceeds from the sale of obligations under this act may be used for administrative review and technical assistance relating to project review.

Section 5102. Funds.

Funds deposited in the Pennsylvania Gaming Economic Development and Tourism Fund under 4 Pa.C.S. § 1407(c) (relating to Pennsylvania Gaming Economic Development and Tourism Fund) shall not be considered State gaming receipts for purposes of 4 Pa.C.S. § 1202(b)(24) (relating to general and specific powers).

Section 5103. Limitations.

Funds deposited in the Pennsylvania Gaming Economic Development and Tourism Fund shall not be used for grants or loans under 64 Pa.C.S. § 1558 (relating to Water Supply and Wastewater Infrastructure Program).

Section 5104. Inconsistent repeal.

The provisions of 4 Pa.C.S. § 1407(b) are repealed insofar as they are inconsistent with this act.

Section 5105. Effective date.

This act shall take effect in 60 days.